

Howrey Docket No.: 04813.0028.NPUS00
MP Ref. No.: M23.NPR.US

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Jeffrey A. Colborn, et al.

Application No.: 10/066,544

Filed: October 19, 2001

For: **FUEL CELL SYSTEM**

Art Unit: 1745

Examiner: John S. Maples

PETITION FOR PATENT TERM ADJUSTMENT TRANSMITTAL

Mail Stop Issue Fee

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicants submit the following documents for appropriate action by the U.S. Patent and Trademark Office:

☒ Petition for Patent Term Adjustment; and

☒ Postcard

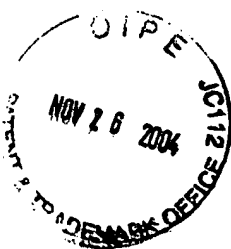
CERTIFICATE OF MAILING
(37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached hereto) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to ***Mail Stop Issue Fee***, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

November 23, 2004
Date of Deposit

Robin L. Clow
Name of Person Mailing Paper

R. Clow
Signature of Person Mailing Paper



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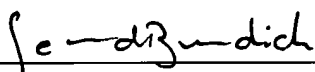
The U.S. Patent and Trademark Office is hereby authorized to charge \$200.00 to our Deposit Account No. **08-3038**, referencing Docket No. 04813.0028.NPUS00. A duplicate copy of this transmittal is enclosed.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. **08-3038** referencing Docket No. 04813.0028.NPUS00.

Respectfully submitted,

HOWREY SIMON ARNOLD & WHITE, LLP

Date: November 23, 2004



Sean D. Burdick, Reg. No. 51,513

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In re the application of:

Jeffrey A. Colborn, et al.

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Examiner: John S. Maples

PETITION FOR PATENT TERM ADJUSTMENT

UNDER 37 CFR § 1.705(b)

Mail Stop Issue Fee

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions the Commissioner to reconsider the Patent Term Adjustment for the above-captioned case indicated in the Notice of Allowance mailed November 2, 2004. In accordance with 37 CFR § 1.705(b), this Petition includes, on the following pages:

- (1) a Statement of Facts including the basis for patent term adjustment; and
- (2) authorization to charge the Petition Fee under 37 CFR § 1.18(e).

11/29/2004 MAHME2 00000019 083038 10066544

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CERTIFICATE OF MAILING
(37 C.F.R. § 1.8a)

I hereby certify that this paper (along with any referred to as being attached hereto) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to Mail Stop Issue Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

November 23, 2004
Date of Deposit

Robin L. Clow
Name of Person Mailing Paper

B. Clow
Signature of Person Mailing Paper

Statement of Facts

The Notice of Allowance mailed November 2, 2004 lists an incorrect Patent Term Adjustment (PTA) of 336 days. The correct PTA is 434 days. The 434 day term is the difference between a 469 day extension under 37 CFR §1.702(a)(1), based on an untimely first Office Action by the Patent Office, and a 35 day reduction under §1.704(b), based on an untimely first Office Action response by Applicant.

The Office incorrectly reduced the 434 PTA to 336 days by applying a 98 day penalty under § 1.704 for alleged failure of Applicant to timely respond to a Notice to File Missing Parts. However, the Notice to File Missing Parts was mailed on March 18, 2002, and Applicant had three months to file a response without incurring a PTA reduction. A copy of the return postcard for Applicant's Transmittal of Missing Parts (attached hereto as "Exhibit A") bears a USPTO receipt stamp of April 15, 2002. Therefore, Applicant's response to the Notice to File Missing Parts, being filed within three months of the Notice, was timely filed, and should not have caused a 98 day reduction in PTA.

On November 19, 2004, the undersigned spoke with Mr. Kery Fries of the Office of Patent Legal Administration and verified that the PTO had assessed the 98 day penalty apparently in error. According to Mr. Fries, the PAIR system lists an entry of September 24, 2002 entitled "APPLICATION IS NOW COMPLETE" for the receipt of Applicant's Transmittal of Missing Parts. In view of Exhibit A, this entry in the PAIR system is clearly erroneous, and caused the incorrect PTA determination.

In accordance with §1.705(b)(2)(iii), Applicant notes that this Application is not subject to any terminal disclaimer.

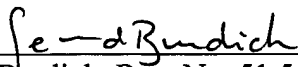
Based on the foregoing facts, Applicant requests that the Commissioner reconsider the PTA for this application, and establish a corrected PTA of 434 days to run from the expiration date of the patent.

Authorization to Charge Petition Fee

Applicant hereby authorizes the Commissioner to charge the fee set forth in 37 CFR §1.18(e), believed to be \$200.00, to our Deposit Account No. **08-3038**. Kindly make reference to Howrey Docket No. **04813.0028.NPUS00** when assessing this fee.

Respectfully submitted,

Date: November 22, 2004



Sean D. Burdick, Reg. No. 51,513

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Telephone No. (949) 759-5219



EXHIBIT A

Please indicate receipt of the slow-identified

<input type="checkbox"/> New Application For:		Priority Date:	
<input type="checkbox"/> Foreign priority already claimed	Fee Amount: or any related fee not specified		
<input type="checkbox"/> Continuation	<input type="checkbox"/> CIP	<input type="checkbox"/> Divisional	CPA <input type="checkbox"/>
<input type="checkbox"/> Specification:	Pages	<input type="checkbox"/> Drawings:	Sheets
<input type="checkbox"/> Response to Office Action Dated:		<input type="checkbox"/> Final Rejection	
<input checked="" type="checkbox"/> Other: Transmittal Letter (2 pg) with Duplicate Copy; Copy of Notice to File Missing Parts; Combined Declaration and Power of Attorney (5 pg); Copy of Filing Receipt with Corrections; and Return Postcard			
<input type="checkbox"/> Assignment Enclosed	<input type="checkbox"/> Cert. of Timely Mailing	<input type="checkbox"/> Exp. Mail:	

IDENTIFICATION OF APPLICATION

Serial No.: 10/066,544		Responsible Attorney: ROL	
Title: FUEL CELL SYSTEM			
Applicant: Jeffrey A. Colborn et al.		Entered By:	
Client: Metallic Power, Inc.		Firm File No.: 04813.0028.NPUS00	
Mailed: April 5, 2002	Filed: October 19, 2001	Due Date:	

